445.

SUPREME COURT OF THE UNITED STATES.

No. 138.

WM. S. BODLEY AND THOS. E. ROBBINS, APPELLANTS,

vs.

WILLIAM M. GOODRICH.

APPEAL FROM THE CIRCUIT COURT U. S. FOR LOUISIANA.

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WILLIAM S. BODLEY et al., complainant,
vs.
WM. M. GOODRICH et al. } No. 1,286.

United States circuit court for the fifth circuit and district of Louisiana.

Pleas and proceedings before the honorable John McKinley and Theodore H. McCaleb, judges of the circuit court of the United States for the fifth judicial circuit:

At a circuit court of the United States for the fifth judicial circuit, in the district of Louisiana, begun and held at the city of New Orleans, on the twentieth day of May, A. D. 1845, and in the sixty-ninth year of the sovereignty and independence of the United States of America.

Be it remembered, that heretofore, to wit, on the 2d day of December, A. D. 1845, came the complainants, William S. Bodley and Thos. E. Robbins, by their solicitor, R. H. Chinn, and filed their bill of complaint in the clerk's office of the circuit court of the United States for the fifth judicial circuit and district of Louisiana, against the defendants, William M. Goodrich and William W. Frazier, which bill of complaint is in the words and figures following, to wit:

To the honorable the judges of the fifth circuit court of the United States and eastern district of Louisiana, in chancery sitting.

Your orators, William S. Bodley and Thomas E. Robbins, humbly complaining, represent to your honors, that they are citizens of the State of Mississippi, residing at Vicksburg, and that they and William W. Frazier, are the legal owners of all that tract or parcel of land, being in East Ouachita land district, in the parish of Catahoula, containing about four thousand one hundred and twenty-six acres; all which is more fully described in an act of sale made before Thomas N. Pierce, on the 30th March, 1841, by Henry S. Dawson and Francis E. Dawson, to your orators, &c. A copy of said act is hereunto annexed for reference, being marked (A.) That said sale was made to your orators, and to the said Frazier, as assignees of the president, directors, and company of the Commercial and Railroad Bank of Vicksburg, a banking and railroad institution, incorporated by an act of the Legislature of the State of Mississippi; that said lands had been entered in the proper land office of the United States, in the name of said Henry S. Dawson.

Your orators further represent, that one William M. Goodrich, a citizen of the State of Louisiana and resident of New Orleans, and who is prayed to be made defendant to this bill, sets forth, and holds out in speeches, that he has a claim or title to said tract of land, derived under and by virtue of a purchase made by him at sheriff's sale, under a writ of fieri facias execution which issued from the first judicial district court of Louisiana, in a case wherein Henry J. Thomas, jr., was plaintiff, and the said Commercial and Railroad Bank were defendants;

and the said Goodrich refuses to surrender to your orators the said claim so by him acquired; and your orators are unable to use, enjoy, and sell the said land as they otherwise might, and they fear that great injury will result to them, so long as their just title is clouded by the said outstanding claim of said defendant. Now, your orators admit the said purchase appears to have been made by said Goodrich; but they insist that he acquired to the said land no title thereby, because the said Commercial and Railroad Bank of Vicksburg had no estate or title in said land, which was subject to be sold under or by virtue of said writ of execution. If your orators should be deemed to be holders of said estate, in their character of assignees, and that the terms used in the act of sale made by said Dawson did more than describe their persons, then they insist that they were and are the holders and owners of said lands, under and by virtue, and for the use and purposes expressed in the deed of assignment made to your orators, &c., by the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, on the 13th February, 1840, and referred to in said act of sale made by said Dawson, and a copy of which is hereunto annexed, for reference and more certainty, and marked (B.)

The purchase was made from said Dawson, in consideration of a debt due from him to the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, and which was embraced in the assignment aforesaid to your orators, &c., and the said assignment was good and valid in law, and completely vested the right to the said debt in your orators, &c., and enabled them to cancel said debt, and in lieu thereof to take, hold, enjoy, and dispose of, the lands aforesaid.

To the end, therefore, and forasmuch, &c., your orators pray, that said William W. Frazier, who is a citizen of the State of Louisiana, may also be made defendant to this bill; that, by the decree of your honor, they may be quieted in their titles to the said lands, and that the said William M. Goodrich may be decreed to release and relinquish, by fit and proper conveyance or instrument in writing, to your orators and said Frazier, all his right, title, and interest in said lands.

That said defendant, Goodrich, may answer the allegations of this bill on oath, and specially the following interrogatories:

1st. Do you not set up and pretend to have right or claim to the lands herein described and referred to?

2d. Have you any other claim or title than that derived under your purchase at sheriff's sale, referred to in this bill?

Your orators pray for such other and further relief, in the premises, as the nature of their case will authorize.

They pray the United States writ of subpœna, &c., may issue.

Signed, CHINN,

Solicitor for complainant.

Exhibit A.

Be it remembered and known, that before me, Thomas N. Pierce, a commissioner for the State of Louisiana, duly authorized, as provided by law, for the State of Mississippi, and residing in the city of Vicksburg, in Warren county, in said State of Mississippi, on the thirtieth day of March, in the year of our Lord one thousand eight hundred and forty-one, personally came and appeared Henry S. Dawson, and Frances E. Dawson, his wife, by him duly authorized and assisted, inhabitants of said city of Vicksburg, in said county and State, who declared and acknowledge, that for the consideration of the sum of twenty thousand dollars, to them in hand paid, (the receipt whereof is hereby acknowledged,) by William A. Frazier, Thomas E. Robbins, and William S. Bodley, also of said city, in the county and State aforesaid, (assignees, by deed bearing date on the 13th February, 1840, and recorded in the office of the probate court of Warren county,) of the president, directors, and company of the Commercial and Railroad Bank of Vicksburg.

They have bargained, sold, aliened, conveyed, and by these presents do bargain, sell, alien, convey, confirm, transfer, deliver, and forever warrant and defend, unto the said William W. Frazier, Thomas E. Robbins, and William S. Bodley, assignees, as aforesaid, the following tracts or parcels of land, situate, lying, and being in "East Ouachita land district," in the parish of Catahoula, and State of Louisiana, and known and designated in the public surveys as the west half of section fifteen; also, the north half of section numbered twenty-one, the west half and northeast quarter of section number thirty, and the northwest quarter of section number twenty-nine; also, the east half of section number fourteen, the south half of section thirty-two, and the northwest quarter of section numbered thirty-one; also, the south half of section number seventeen, and the south half and northwest quarter of section number eighteen; the whole of section nineteen, and the west half and northeast quarter of section number twenty; all of said lands being in township number thirteen, of range number eight east, in said East Ouachita land district, and containing about four thousand one hundred and twenty-six acres; which said lands were entered at the land office of the said district by the said Henry S. Dawson.

To have and to hold the before conveyed land and premises, to the said William W. Frazier, Thomas E. Robins, and William S. Bodley, assignees, as aforesaid, or their successors or assigns, or the heirs of them, their successors, or assigns, forever. And the said William S. Bodley and Thomas E. Robins, being present, and accepting the above conveyance, acting for the said assignees, as in said deed of assignment provided, releases me, the said commissioner, from the production of the certificate of the officer of the recorder of mortgages of said parish of Catahoula, shewing what incumbrances, if any, exist on the above bargained and sold premises.

The said Frances E. Dawson declared, that in becoming a party to these presents, it is her wish and intention to release, in favor of said

William W. Frazier, Thomas E. Robins, and William S. Bodley, assignees as aforesaid, the before described tracts and parcels of land, together with all claims or privileges to them pertaining, or in any wise belonging, from all claim or claims, mortgage or mortgages, or privileges whatsoever, which she now has, or in future may have, whether resulting from her marriage with said Dawson, or otherwise.

Whereupon I, the said commissioner, did inform the said Frances E. Dawson, apart and out of the hearing of her said husband, that she had, by law, a legal mortgage on all the property of her said husband, for the restitution of her dotal effects, whether brought in marriage or subsequently acquired, for the restitution of her paraphenal effects, of which her said husband had the administration or enjoyment, for debts by her contracted with her said husband, and for nuptial presents; and the said Mrs. Frances E. Dawson did thereupon declare to me that she was fully acquainted with the nature and extent of her claims and privileges on the property of her said husband, and that she did persist in her intention to approve of and ratify this act, and to release all her claims, mortgages, and privileges, in favor of the said William W. Frazier, Thomas E. Robins, and William S. Bodley, assigns as aforesaid, and further purposes aforesaid. And the said Henry S. Dawson, being now present, aiding and assisting his said wife in the execution of these presents, she, the said Frances E. Dawson, declared, that she did, and does hereby, formally renounce, in favor of the said William W. Frazier, Thomas E. Robins, and William S. Bodley, aforesaid, and for the purposes aforesaid, all her said rights, claims, and privileges, and particularly the general and tacit mortgage, which by law she has on all the property of her said husband; hereby consenting to postpone and relinquish her said rights and tacit mortgage in favor of the said deed herein made, and binding herself and her heirs at all times to acknowledge and sustain the validity of this act.

And the said Henry S. Dawson further covenants and agrees, to and with the said William W. Frazier, Thomas E. Robins, and William S. Bodley, assignees as aforesaid, their successors and assigns, and the heirs of them, their successors or assigns, to warrant, and does, by these presents, for himself, his heirs, executors, and administrators, warrant the above conveyed land and premises to be above overflow, and free from all liens and encumbrances.

In testimony whereof the said parties have hereto set their hands and seals, the day and year first written.

Original signed,

HENRY S. DAWSON, [SEAL.]
FRANCES E. DAWSON, [SEAL.]
T. E. ROBINS, [SEAL.]
WM. S. BODLEY. [SEAL.]

In presence of—
SAMUEL W. DORSEY,
F. NORCOM.

Done, passed, and acknowledged, before me, the undersigned commissioner, on the day and year above written, in the city of Vicksburg,

in the State of Mississippi, by the above named Henry S. Dawson, Frances E. Dawson, Thomas E. Robins, and William S. Bodley, in presence of Samuel W. Dorsey and F. Norcom, competent witnesses, who, together with the above named parties, signed the same in my presence. And I, the said commissioner, did first declare to, and caution the said Frances E. Dawson, as above written, apart from and out of the presence of her husband, the said Henry S. Dawson, and she did declare to me that she was aware of her aforesaid rights, and that she voluntarily renounced the same as above written, and persisted in signing the above.

In testimony whereof, I hereunto affix my signature and official seal, in the city of Vicksburg aforesaid, this 30th day of March, A. D. 1841.

[L. S.]

Signed,

THOMAS N PIERCE,
Commissioner for the State of Louisiana, in the State of Mississippi.

Exhibit B.

This indenture, made and entered into on this thirteenth day of February, in the year of our Lord one thousand eight hundred and forty, between the president, directors, and company, of the Commercial and Railroad Bank of Vicksburg, of the first part, William W. Frazier, Thomas E. Robbins, and William S. Bodley, of the second part, and the various other persons and corporations, creditors of the said Commercial and Railroad Bank of Vicksburg, who shall be deemed parties to this instrument, in the manner herein provided, of the third part, witnesseth:

Whereas, the embarrassed situation of the president, directors, and company of the Commercial and Railroad Bank of Vicksburg, and the present inability of its debtors to meet their liabilities, place it out of the power of said corporation to complete the railroad, or to pay its debts, without having time to make collections; and whereas the unprecedented pressure which now rests upon the community, and the utter impossibility for said corporation to collect its debts immediately, without being destructive to the interests of its debtors, by causing a great sacrifice of their property, and without being destructive also to the best interests of the corporation, as such sacrifices, on the part of its debtors, will wholly disable them from complying with their engagements to said bank; all of which causes render it necessary, (in order that justice may be done to all the creditors of said corporation, and in order to complete the railroad, which was the great and primary object for which the charter was granted.) That an assignment of the property, debts, and effects of the said corporation, should at once be made for the benefit of its creditors, as will most effectually promote the interest of the creditors of the institution, and protect its debtors from loss and sacrifice, and at the same time furnish means to finish and complete the railroad immediately, and to protect and secure to the stockholders of the said road the franchises granted by the charter. Now to effect *to* the purposes aforesaid,

this indenture witnesseth, that the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, in consideration of the premises, and of five dollars, to the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged; and further, in consideration of the covenants, stipulations, and agreements herein contained, have given, granted, bargained, sold, assigned, and transferred, and set over, and by these presents do give, grant, bargain, sell, assign, transfer, and set over, to said William W. Frazier, Thomas E. Robins, and Wm. S. Bodley, and to the survivor of them, the said Wm. W. Frazier, Thomas E. Robins, and William S. Bodley, and to the heirs, executors, administrators and assigns of such survivor, all the property, real, personal and mixed, which either in law or equity, belongs to the said party of the first part, to wit: The real and personal estate of every kind and description, situate in the county of Warren, and State of Mississippi, or elsewhere, its stocks, goods, wares, merchandize, bills receivable, bonds, notes, book accounts, claims, demands, judgments, choses in action, and all of its property of every kind and nature, whether enumerated and specifically mentioned or not; and the said president, directors, and company of the Commercial Railroad Bank of Vicksburg, for the consideration aforesaid, do also bargain, transfer, and assign, to the said William W. Frazier, Thomas E. Robins, and William S. Bodley, and to the survivor of said William W. Frazier, Thomas E. Robins, and William S. Bodley, and to the heirs, executors, administrators, and assigns of such survivor, all the surplus profits hereafter arising, or which may hereafter accrue from said railroad, from and after the time said road is finished and completed to Jackson, that is to say, all the profits which may thereafter be received, over and above the necessary expenditures and disbursements of the road, including officers' salaries, &c., and to be received by said assignees; and only such profits as may arise after the completion of said road are to be received by said assignees; and in order the more effectually to carry this provision into effect, the said trustees, or any hereafter to be appointed, are hereby declared to be the joint agents of the party of the first part, and of *the* all the creditors of said corporation; and as such agents said trustees are hereby authorized and empowered to take possession of said road, and control the same, for the purpose of finishing and completing the same, and to receive the profits and issues thereof; provided, however, that the horses, slaves, waggons, carts, mules, oxen, iron, engines, and implements of every kind, now used in working on and constructing the railroad, are not hereby intended to pass to said assignment, and are hereby excepted out of the provisions of this deed. To have and to hold to the said William W. Frazier, Thomas E. Robins, and William S. Bodley, and to the survivor of the said William W. Frazier, Thomas E. Robins, and William S. Bodley, and to the heirs, executors, administrators, and assigns of such survivor, in trust, however, for the following uses and purposes, to wit: That the said William W. Frazier, Thomas E. Robins, and

William S. Bodley, shall proceed in the manner that they may deem most for the interest of all concerned, to sell, and dispose of, either at private sale or by auction, and to execute good and sufficient deeds, bills of sale, releases, and all other instruments of conveyance, to effect a sale or transfer of the real and personal estate, goods, and stocks of said party of the first part, herein conveyed to such person or persons, and for such prices as in their judgment may appear best for the interest of all concerned; and to collect and to hold the proceeds of such sales; and also to collect and realize in money, the most that may be practicable, from the bonds, bills of exchange, bills receivable, notes, accounts, claims, judgments, demands, choses in action, and profits of said railroad, from and after the time of its completion to Jackson, hereby transferred and assigned to them; provided, however, that said trustees shall in no case refuse to receive from debtors, to said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, the bank notes, checks, post notes, certificates of deposit, and bills receivable, due from said bank or any of its branches, in payment of debts due to the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, provided such debtor or debtors shall give sufficient security for the amount of his, her, or their liabilities, within twelve months after the registration of this deed of trust; and it is further stipulated, that in all cases when security is not given, as contemplated by the provisions of this deed of trust, by any of the debtors to said bank, it shall not be compulsory on said trustees to institute suit immediately, but said trustees are hereby empowered, either to sue for, to renew, or give farther indulgence, or to compromise, or settle said debts in such manner as will best secure the same, and upon such conditions as in their judgments will be to the interest of the creditors of said bank; and said trustees are hereby declared to have power, in all cases of doubtful debts, to compromise and settle the same, upon such terms as they may deem best for all parties; and from the proceeds of such sales and collections, the said trustees and the survivor of them, shall pay all just and reasonable expenses and charges, of making and carrying into full effect this assignment, and the objects thereof; in doing which the said trustees are hereby authorized, to their discretion, to employ one or more attorneys, agent or agents, who shall by them be paid, out of such proceeds, a reasonable compensation for their services; and it is further stipulated, that the said trustees shall retain for themselves; out of said proceeds, as compensation for their labor, trouble, and responsibility in the premises, at the rate of eight thousand dollars each per annum, which sum shall be in lieu of all commissions, and be a full compensation for their several services; and out of said proceeds shall also pay all necessary expenses of the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, in the management of said corporation; and the residue of the proceeds of such sales and collections, and the profits arising from said railroad, from and after its completion to Jackson, shall be considered as the nett avails or proceeds of the property, profits, and effects hereby assigned.

And whereas, it was the principal object of the legislature, in granting the charter to said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, that the railroad from Vicksburg to Jackson should be made and completed. And whereas, if the said road is not completed within the time specified in the said act of incorporation of said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, the charter will be forfeited; and the said road, as far as is now made, will also be forfeited, and the profits thereof, which will eventually enable the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg to pay their liabilities, will be wholly lost to the creditors. Therefore, with a view to prevent irreparable injury to the creditors of said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, it is hereby stipulated and agreed, that the aforesaid trustees shall, and they are hereby declared to have the power, and it is hereby made their duty, to borrow, in the name and on behalf of said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, from any person or persons, corporation or corporations, such sum or sums of money as may be necessary to complete the said railroad to Jackson, provided said sum or sums of money so to be borrowed shall not exceed the amount of two hundred and fifty thousand dollars. And should said sum of two hundred and fifty thousand dollars, or any part thereof, be borrowed, the property and effects hereby conveyed and assigned are to be bound for the re-payment of the same, with all interest thereon. Therefore, in the first place, out of said nett avails of proceeds, the said trustees, or the survivor of them, shall pay off and discharge, in preference to all other claims or demands, such amounts, not exceeding the sum of two hundred and fifty thousand dollars, as may be borrowed by said trustees from any person or persons, corporation or corporations, for the purpose of completing the railroad to Jackson; and secondly, the said trustees, from said nett avails or proceeds, which shall remain after payment of said loans, if so made, as aforesaid, for the purpose of finishing and completing said railroad, shall pay all the just debts, balances, and sums due from the party of the first part, and of every kind and description, and for the payment of which the party of the first part is legally liable; provided, however, that no stockholder who has paid in his stock, or any part thereof, shall be considered as a creditor, within the meaning of this deed of trust, for such stock so paid in as aforesaid; and should the remainder of said nett avails or proceeds not be enough to pay off all the debts and liabilities of said party of the first part in full, then the same shall be, by said trustees, applied in such manner as to pay off pro rata, or in equal proportions to the amount of each debt or claim; and should there a balance, after payment of all the debts due by said party of the first part, then such balance is to be paid to said party of the first part; provided, however, no creditor of the said party of the first part shall be entitled to be paid any part or portion of the nett avails or proceeds aforesaid, except upon the terms and conditions hereafter stated.

And whereas, it will be necessary for said trustees, in order to prevent a large accumulation of the nett avails or proceeds, as aforesaid, remaining upon their hands, to make stated dividends or apportionments among the creditors; and whereas, it is necessary for said trustees, when such dividends or apportionments are made as aforesaid, to know the amount of the indebtedness of the said party of the first part, and to whom indebted. Therefore it is stipulated, and it is hereby made the duty of said trustees, to make publication, in such manner as will afford information to all creditors, and thereby notify all the creditors of said party of the first part, to file their claims, judgments, bills, bonds, notes, or other evidences of indebtedness, with said trustees, or either of them, within twelve months from and after the registration of this deed of trust, and all the creditors of the said party of the first part, who shall so file their debts or claims aforesaid, shall be considered and taken to be parties to this deed of trust; and, at the end of twelve months from said registration, all the nett avails or proceeds, after first paying the loan, should it be made to complete the railroad as aforesaid, shall be divided equally, in proportion to the amount of each debt, among all creditors who have filed their claims as aforesaid; and said trustees shall, every six months thereafter, divide and apportion, pro rata, whatever nett avails or proceeds may be on hand among said creditors; provided, however, that any creditor, (or creditors,) who has not filed his, her, or their claim, or claims, as aforesaid, may file the claim, or claims, at any time afterwards; but in such case, such creditor or creditors shall only be entitled to a *pro rata* share of the succeeding dividends.

And whereas, many debts or claims may be presented, which are of doubtful character, or which may not be legally just, or which may have been paid, or which may otherwise be inequitable; therefore, no claim or demand, (other than the bank notes, drafts, checks, bill of exchange, and certificates of deposite of said president, directors, and company of the Commercial and Railroad Bank of Vicksburg,) shall be considered as received or filed with said trustees; nor shall any claim or claims, other than those above enumerated, or any part thereof, be paid by them, unless the board of directors of said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, or a committee appointed by them shall approve the same, by endorsing the same as valid; and it shall be the duty of each and every creditor or claimant, before filing his or her claims with the said trustees, to present the same (unless the same consists of bank notes, drafts, or checks, bills of exchange, or certificate of deposite issued by said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, or bonds made and executed by them as aforesaid) to the board of directors of said company, or to the committee appointed by them as aforesaid, for their approval; and in all cases where suit may be brought on any claim or claims, which have been rejected by said board of directors or said committee, or on which they refuse or neglect to act, if the party or parties who hold such claim or claims shall notify the trustees that suit has been commenced thereon, he or they shall be considered as a party

or parties to this deed from that time; provided he or they succeed in obtaining judgment against the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg; and he or they shall be entitled to a pro rata share of the dividends from the time of the notification, if, as aforesaid, he or they obtain a judgment; but it shall be the duty of said trustees to go on and divide the nett avails or proceeds in their hands, as herein provided, among all the other creditors whose claim have been allowed; but if judgment shall be rendered against said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, in favor of said claimant or claimants, the proportion of said claimant or claimants shall be applied and paid in full out of the succeeding dividends, so as to make his or their share equal with all other creditors: Provided, however, that in all such cases the said trustees, and the claimant or claimants, may submit the matter to three arbitrators to be chosen by the parties, whose award shall be final and conclusive; and the said trustees are to have possession and *controul* of the books, notes, bonds, choses in action, &c., of the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, and at the branches thereof, so far as the same may be necessary for them to collect and adjust; and the retention of the same by the said party of the first part, in their banking house at Vicksburg, and in the banking houses of the branches of said bank, for the safe-keeping of the same, and the convenience of all parties, will be considered as the possession of said trustees, and subject to their control, order, and direction; and it is expressly agreed, that the acts of a majority of said trustees shall be the acts of all, and as binding as if all had assented thereto. And the said parties of the second part covenant, stipulate, and agree, to and with the party of the first part, and with all and each of the creditors of said party of the first part, who may become parties hereto as is herein before provided, that they will serve, annually exhibit a statement of their accounts to the board of directors of the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg. And it is further stipulated and agreed, by and between the said parties, that if the trustees herein named, or either of them dies, or refuses to act, then, and in either of said cases, the board of directors of the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, shall have power to appoint any other trustee or trustees in place of such as have died or refused to act; and the said substituted trustee or trustees, so appointed, (which said appointment shall be entered on the minutes of the proceedings of said board of directors of the president, directors, and company of the Commercial and Railroad Bank of Vicksburg,) shall have all the power and authority of the trustees herein appointed, and shall be subject to all the responsibilities and duties belonging to the trustees herein particularly named as aforesaid in this deed of trust; and said substituted trustees shall be entitled to the same compensation as is herein provided to be paid to the said trustees herein named; provided that, in appointing new trustees, the said board of directors of the president, directors, and com-

pany of the Commercial and Railroad Bank of Vicksburg, shall have no power to change, alter, modify, or revoke, any of the trusts hereby created, nor shall their failure or omission to appoint a trustee or trustees, when necessary, in anywise affect this trust, but the same may be supplied, if necessary, according to the rules which govern in a court of chancery; nor is the said board of directors to have power or authority in any manner to revoke this deed, or any part of it, nor shall any appointment, or failure to appoint a trustee or trustees, in any manner give the board of directors of the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, any control over this deed. And it is hereby declared to be the intention of the parties to this instrument, that the transfer of all the property, choses in action, and effects, as before mentioned, is to embrace, and does by these presents include and embrace, all of the property, real and personal, choses in action, effects, &c., of the president, directors, and company of the Commercial Railroad Bank of Vicksburg, and all their branches; the proceeds of all judgments recovered by the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, and all claims now in suit and not reduced to judgment; and such as may be in the hands of attorneys for collection in the State of Mississippi, or elsewhere; and the said claims now in suit, and which may be in the hands of attorneys or agents for collection, are to be prosecuted, and the proceeds thereof, together with the proceeds of such claims as are reduced to judgment, are to be collected and received by said trustees, and applied in the same manner as is provided herein for the application of the proceeds of the other property, choses in action, and effects herein before mentioned; and said claims, judgments, &c., are to be subject, in every respect, to this deed, and the control of the trustees herein named, as any other claim is subjected to their control hereby. And it is hereby declared, that the provisions of this deed of trust are to apply, in all respects, not only to the principal bank at Vicksburg, but to all its branches; and this transfer embraces, and intended to embrace, all the property of the said party of the first part, (not herein excepted,) whether situated in Mississippi or elsewhere; but it is understood that no property, the use of which consists in the consumption, as wood, coal, &c., is intended to be embraced or conveyed hereby; and such property (together with that herein excepted) is hereby excepted out of the general provisions of this deed. And it is further agreed, that out of the proceeds of the property hereby assigned, the said trustees shall pay any debt or debts for which any of the property herein assigned is bound, or on which a lien exists, either by operation of law or by contract; and such property, when so discharged of such lien, shall be, and is hereby, vested in said assignees for the purposes of this trust.

In testimony whereof, David Conynham, president of the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, by virtue of the authority in him vested, by an order and resolution of the board of directors of said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, hereto

affixes the common seal of said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, to this deed, for and on behalf of said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, and he, by virtue of the authority in him vested, hath affixed the seal of said corporation to this deed, as the act and deed of said corporation; and, as evidence thereof, he also subscribed his name hereto. And the said parties of the second part have hereunto set their hands and seals, the day and year above written.

[SEAL.] D. CONYNGHAM, *President.*
W. W. FRAZIER, [SEAL.]
T. E. ROBINS, [SEAL.]
WM. S. BODLEY. [SEAL.]

Witness: J. G. BIBBY,
R. R. ROBINSON.

State of Mississippi, Warren county:

Personally appeared before me, Harvey M. Jenkins, clerk of the probate court of the county of Warren, in the State of Mississippi, Isaac G. Bibby and Robert R. Robinson, the subscribing witnesses to the within and foregoing instrument of writing or deed, who being duly sworn the truth to speak, touching the execution of the same, upon their oaths declared, that they saw David Conyngham, the president of the president, directors, and company of the Commercial and Railroad Bank of Vicksburg, sign and subscribe the same, and put the common seal of the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, to said instrument of writing or deed, and deliver the same, on the 15th day of February, 1840, as the act and deed of the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, to the said parties of the second part, therein named, for the uses, purposes, and trusts therein mentioned; that they saw William W. Frazier, Thomas E. Robins, and William S. Bodley, the parties of the second part therein, sign, seal, acknowledge, and deliver the same, as their act and deed, on the said 15th day of February, 1840, for the uses, purposes, and trusts therein mentioned; and that they subscribed the same as witnesses, at the request, and in the presence of said David Conyngham, William W. Frazier, Thomas E. Robins, and William S. Bodley, and in the presence of each other.

In testimony of which, I, the said Harvey M. Jenkins, clerk of the probate court of said county of Warren, in the State of Mississippi, have hereunto subscribed my name and affixed my seal of office, at office, in Vicksburg, on this 15th day of February, 1840.

[L. S.] H. M. JENKINS, *Clk.*

The State of Mississippi, Warren county:

I, Harvey M. Jenkins, clerk of the probate court of said county, do hereby certify, that the foregoing assignment of the president, directors, and company of the Commercial and Railroad Bank of Vicksburg, with the certificate of acknowledgment, were filed for record in my office,

on the 15th February, 1840. Whereupon, I have made the same of record, in book O, pages 213, 214, 215, 216, 217, and 218.

Given under my hand and seal of office, this 16th day of [SEAL.] March, 1840.

H. M. JENKINS, *Clk.*

The State of Mississippi, Warren county, sct:

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that the foregoing assignment of the Commercial and Railroad Bank of Vicksburg, with the certificates, have been correctly copied from book O, pages 213, 214, 215, 216, 217, and 218, of the record of deeds, &c., in my office.

Given under my hand and seal of office, this 27th day of [SEAL.] May, 1844.

Signed, A. H. ROWLETT, *Clk.*

Albert G. Brown, Governor of the State of Mississippi, to all who shall see these presents, greeting:

Be it known, that A. H. Rowlett, whose name is subscribed to the annexed certificate, was, on the 27th day of May, A. D. 1844, clerk of the probate court of Warren county, in the State of Mississippi, that his attestation to the annexed certificate is in due form of law, and made by the proper officer, and that full faith and credit are due to all his official acts.

In testimony whereof, I have caused the great seal of the State to be hereunto affixed.

[Seal of the State of Mississippi.] Given under my hand, at the city of Jackson, this 31st day of May, A. D. 1844.

A. G. BROWN.

By the Governor:

WM. HEMINGWAY,
Secretary of State.

And afterwards, to wit, on the 21st February, 1845, came the defendant Gooderich, by his solicitors, Stockton & Steel, and filed his answer to complainants' bill, which is in the words and figures following, to wit:

Fifth circuit court of the United States, for the eastern district of Louisiana, in chancery sitting.

WILLIAM S. BODLEY, &c.
vs.
WM. M. GOODERICH, &c. } No. 1,286.

The separate answer of the defendant, William M. Gooderich, who is a citizen of the State of Louisiana, residing in the city of New Orleans, now, and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties, and other imperfections in

the said complainants' said bill of complaint contained, for answer thereto, or unto so much, and such parts thereof, as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering, saith:

That he has been informed, and verily believes, that the conveyance, in said bill of complaint mentioned, from the said Henry S. Dawson and Frances E. Dawson to the said William S. Bodley, Thomas E. Robins, and William W. Frazier, was executed, as set forth in said bill, to the said complainants; and the said William W. Frazier, styling them assignees of the president, directors, and company of the Commercial and Railroad Bank of Vicksburg. But this defendant alleges and avers, that neither the said complainants, nor the said William W. Frazier, nor any one of them, are now, or ever, at any time heretofore, were assignees of said president, directors, and company of said bank, or of any property or assets of said bank, of any description whatsoever.

This defendant alleges, that the said deed of assignment, so styled by complainants, from the said president and directors of said bank, referred to and marked B, in the said bill of complaint, is not an assignment or transfer to said Bodley, Robbins, and Frazier, or to any one or more of them, of all or any part of the assets or property of the said bank; that the said deed only constituted them the agents of said bank, to do and transact business for the same, as their agents, and conferred on them no other character whatever; and all property, rights, and credits which they, the said agents, held and possessed by virtue of said deed, marked B, was really, in law and equity, held and possessed by them, not in their own right, but only as agents of said bank, who was the real, legal, and equitable owner and holder thereof. And this defendant alleges, that the lands mentioned in the deed, marked A, became, by virtue of said deed, the property of the said bank, both in law and equity; and that neither the complainants, nor the said William W. Frazier, have now, nor did they, or any one or more of them, ever have any legal or equitable interest in and to the same.

But if your honors shall be of opinion that said deed, marked B, on its face, or in its terms, imports a transfer of property, then this defendant alleges, that the said president and directors of said bank, who executed the same, were, by the charter of said bank, and by the election of said company, the agents of said bank to conduct its affairs, and "to carry out the objects intended to be effected by the incorporation of said company;" and he denies that it was within their legal power to delegate to agents of their own choice the whole conduct of the affairs of said company, or to assign all the property and assets thereof, of every description, by a general assignment, to any person or persons whomsoever; and so this defendant avers and alleges, that, for want of authority in the said president and directors of said bank, the said deed, marked B, does not operate as an assignment of any portion of the property, effects, or assets to said company belonging at the date thereof, or which have been since acquired by said company, in

any manner whatever; but only as an appointment and constitution of agency in the said Bodley, Robbins, and Frazer to do for said company such acts as could be legally done by agents appointed and constituted by the said president and directors of said bank.

This defendant alleges, that the transfer of said lands, mentioned and described in the said deed, marked A, made and executed by said Henry S. Dawson and Frances E. Dawson to the said Bodley, Robins, and Frazer, was and is a transfer of all legal and equitable rights of the said vendors in and to the said lands to the said bank, who was the only true and lawful owner thereof at the time the same was seized and sold by the sheriff of the parish of Catahoula as the property of said bank, and was bought by this defendant.

This defendant shows, that, on an execution writ, issued from the first district court of the State of Louisiana, in the case of Henry Thomas, jr., vs. the Commercial and Railroad Bank of Vicksburg, numbered on the docket of said court 19,092, wherein judgment had been rendered against said bank, the said lands, mentioned in said deed, marked A, were seized by the sheriff of the said parish of Catahoula, and on the first day of April, A. D. 1843, by virtue of said writ, were sold by said sheriff as the property of said bank, and bought by this defendant for the sum of five thousand five hundred and twenty-eight dollars and eighty-four cents, which this defendant alleges is a sound price therefor.

That this defendant is informed and advised, and he verily believes, said sale was regularly made. He alleges he is an innocent purchaser of said lands, for a valuable consideration, and without notice of any defect in the title of the said bank in the same, if any there may be, which is denied by this defendant.

This defendant alleges, that neither said Bodley, Robbins, nor Frazier, have now, or ever did have, any legal or equitable interest in and to said lands; but if your honors shall be of opinion that the legal interest in said lands passed by said deed, marked A, to them, the said Bodley, Robbins, and Frazer, or to any one or more of them, and that the equitable interest therein passed to said bank by virtue of said deed, then this defendant alleges, that, by virtue of the said sheriff's sale made of said lands, he has succeeded to all the rights therein of said bank, and he is entitled to a decree of this honorable court, commanding and ordering said William S. Bodley, Thomas E. Robbins, and William W. Frazer, to each of them, to transfer to this defendant all said legal title and interest in said lands which may be thought to rest in them, or either of them.

This defendant admits that the debt heretofore due by the said Henry S. Dawson to the said Commercial and Railroad Bank, was, by said deed, marked B, placed in the same situation with the other assets of said bank; and that it was given up and released by said Bodley, Robbins, and Frazer, to said Dawson, in consideration of said conveyance of said lands, by said deed, marked A; but he expressly and positively denies that said debt was ever legally transferred as as-

signed by said bank to them, or any one of them; and he alleges that they acted as the agents only of said bank in releasing said debt, and receiving a conveyance of said lands, and not otherwise.

This defendant, answering categorically and directly to the first interrogatory propounded to him in the said complainants' bill, says that he does set up title and claim to all said lands, mentioned in said bill of complaint, and in said deed, marked A; and he avers that his title and claim thereto is good and valid, both in law and equity.

And answering to the second interrogatory propounded to him in said bill, he, defendant, says that he lays claim to said lands only by and through the said sheriff's sale in said bill mentioned, and by reason of no other title whatever. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this *this* honorable court shall direct; and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained; and prays for all such other and further relief as equity and good conscience will allow; and as in duty, &c.

Signed, STOCKTON & STEELE,
Solicitors for defendant.
WILLIAM M. GOODRICH.
Signed, WM. M. GOODRICH.

Personally appeared before me, the undersigned U. S. commissioner, Wm. M. Goodrich, who, being duly sworn, declares that the facts set forth in the foregoing answer are true.

February 17, 1845.

Signed, N. R. JENNINGS, *Comm'r.*

And afterwards, to wit, on the 3d March, 1845, came the complainant by their solicitor, R. H. Chinn, and filed their replication in the words and figures, to wit:

BODLEY, &c.
vs.
GOODERICH, &c.

And the said complainants, for replication to the answer of the defendant, Goodrich, herein comes and says, that the allegations in their bill contained are true; and that the allegations and suggestions in defendants' answer are untrue; and this, &c., and wherefore, &c.

Signed, CHINN, *for Compl'ts.*

And afterwards, to wit, on the 6th May, 1843, the following agreement was filed by the parties, to wit:

1. The plaintiff, Henry Thomas vs. Comm. and R. R. Bank of Vicksburg, was a creditor of the bank, at and before the date of the deed of assignment, under which the complainants claim, for the amount of his judgment.

2. The suit of Henry Thomas vs. the Commercial and R. R. Bank was commenced after the date of the alleged assignment.

3. Regular judgment was rendered in said suit against the bank.

4. Execution issued, and the land was sold by virtue of said execution, and Goodrich bought it; which facts are acknowledged.

5. The execution of the deeds of assignment is acknowledged to have been made by the persons mentioned in said deeds; and the capacity of said persons is admitted.

6. The execution of the deed from Dawson and wife to Bodley, Robbins, and Frazier, is admitted; and that the consideration of said sale was a debt due by said Henry S. Dawson to the said bank.

7. It is admitted the said bank was unable to pay its debts at the execution of said deeds relied on by complainants as assignments; that said company or corporation is still unable; and that her notes, commonly called notes of circulation, have, since the date of said alleged assignment, greatly depreciated; they are now selling for only 10 or 12 in the dollar.

8. It is admitted that no dividend has ever been made amongst the general creditors of said bank, by said assignees, or by any one else, since the date of said alleged assignment.

9. It is admitted that said Henry Thomas, the plaintiff in said suit against said bank, wherein judgment was rendered against said bank for about $7,000 by the first district court of the State of Louisiana, never did accept the assignment; but, being aware of its provisions, expressly refused to become a party thereto.

10. The assignees knew of the institution of the suit of Thomas vs. the Bank, in time to have set up and made claim therein, &c.; and they also knew of the fact that the lands had been seized under execution in time also to have made their claim.

11. The assignees effected a loan of $250,000 for the purpose of completing the road, which has been done.

Signed, STOCKTON & STEELE,
Solicitors of Defendant.

Signed, CHINN, *for Complainant.*

And afterwards, to wit, at a court held on the 7th May, A. D. 1845, the following order was made, to wit: This cause came on this day for trial, R. H. Chinn, esq., counsel for complainants, and Stockton, esquire, counsel for defendants; when argument of counsel being concluded, the cause was submitted, and the court took the same under advisement.

And afterwards, to wit, at a court held on the 17th May, A. D. 1845, the following decree was rendered in this cause, to wit:

This cause came on to be heard upon bill, answer, and exhibits, and the evidence on file; and, upon argument of counsel on both sides, the court now adjudge, order, and decree, that the complainants' bill be dismissed; and that they pay to the defendants the costs of this suit.

And afterwards, to wit, at a court held on the 17th May, A. D. 1845, the following order was made, granting an appeal in this case, in the words and figures following, to wit:

On motion of R. H. Chinn, esq., counsel for *defendants*, an appeal

is allowed them to the next term of the Supreme Court of the United States from the judgment rendered this day in this case, upon the giving bond and security in the sum of $500. And the court accepted R. H. Chinn, esq., as security in said bond.

Appeal bond.

Know all men by these presents, that we, William S. Bodley, Thomas E. Robins, and Richard H. Chinn, are held and firmly bound, jointly and severally, unto William M. Goodrich, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Goodrich, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the 22d day of June, in the year of our Lord eighteen hundred and forty-five.

Whereas the said Bodley & Robins have obtained an order from the court of the United States, fifth circuit and eastern district of the State of Louisiana, allowing them an appeal from a decree dismissing their bill in equity against said Goodrich, &c., on the 17th May, 1845, to the Supreme Court of the United States, upon the execution of this bond with the said Chinn as their security.

Now, the condition of the above obligation is, that we, the above bounden Bodley & Robins, and Chinn, will well and truly pay to the said Goodrich, the defendant in said appeal, all such damages as he may recover against us, in case it should be decided that the said appeal was wrongfully obtained, or if the same shall not be prosecuted with effect.

Signed, WM. S. BODLEY, and [SEAL.]
J. E. ROBINS, *by R. H. Chinn.*
R. H. CHINN. [SEAL.]

Signed, sealed, and delivered in the presence of—
Acknowledged before me.
Signed, J. McCULLOCK.

Circuit court of the United States for the fifth judicial circuit, district of Louisiana.

I, Edmund Randolph, clerk of the circuit court of the United States, in and for the fifth judicial circuit, and district of Louisiana, do hereby certify, that the foregoing thirty-three pages contain a full, faithful, and true transcript of the record and proceedings, together with all the evidence adduced on the trial of a certain cause, wherein W. S. Bodley et al. are complainants, and Wm. M. Goodrich et al. are defend'ts, so far as the same now remain on file of original record in said court.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of New Orleans, this [SEAL.] eleventh day of July, A. D. 1845, and the 70th year of the American independence.

Attest: ED. RANDOLPH, *Cl'k.*